



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

JUL 16 2009

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7006 2150 0001 4941 2130

In Reply: AIR-5

Refer To: Docket No.'s

R9-09-06

R9-09-07

R9-09-08

David P. Skarie, President  
Ralcorp Holdings, Inc.  
800 Market Street, Suite 2600  
St. Louis, MO 63101

Re: Ralcorp Holdings, Inc. (Facility N-1933)  
Modesto, California

Dear Mr. Skarie:

Enclosed is a Finding of Violation ("FOV") and two Notice of Violations ("NOVs") issued by the United States Environmental Protection Agency ("EPA") to Ralcorp Holdings, Inc ("Ralcorp"), concerning the operation of its cereal manufacturing facility in Modesto, California ("the Facility").

The FOV has been issued because the Facility is a major source and has failed to obtain a Title V operating permit. The NOVs have been issued to address alleged violations of the San Joaquin Valley Air Pollution Control District ("District") Rule 2201 ("New and Modified Stationary Source Review Rule") and Rule 4693 ("Bakery Ovens"). Both of these rules are in the District's portion of the California State Implementation Plan. Specifically, the Facility is in violation of Rule 2201 because it failed to comply with Rule 2201's Best Available Control Technology and offset requirements when it added new emission units to the Bran Flake production line in 2002. The other NOV identifies a violation of Rule 4693 because the Facility's bakery oven emissions are not vented to an approved emission control device.

If you wish to discuss the FOV and NOVs, you may request a conference with EPA. The conference would afford Ralcorp an opportunity to present information

bearing on the finding of violation, the nature of the violation, any efforts you have taken to achieve compliance, and the steps you propose to take to achieve compliance.

Please contact Kara Christenson, Office of Regional Counsel, at (415) 972-3881, to request a conference. Such request should be made as soon as possible, but in any event no later than 10 working days after receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan", written over the printed name.

Deborah Jordan  
Director, Air Division

Enclosures

cc: Mr. Seyed Sadredin, APCO, San Joaquin Valley Air Pollution Control District  
Mr. James Ryden, Chief, Enforcement Division, California Air Resources Board  
Tim Wiese, Ralcorp Holdings, Inc.  
Ty Hakman, Ralcorp Holdings, Inc.  
Steven Poplawski, Bryan Cave LLP  
Susannah Mitchell, Bryan Cave LLP



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R9-09-08

Mr. Seyed Sadredin  
Air Pollution Control Officer  
San Joaquin Valley Air Pollution Control District  
1990 E. Gettysburg Avenue  
Fresno, CA 93726-0244

Re: Ralcorp Holdings, Inc. (Facility N-1933)  
Modesto, California

  
Dear Mr. Sadredin:

Enclosed for your information is a copy of a Finding of Violation ("FOV") and two Notice of Violations ("NOVs") issued by the United States Environmental Protection Agency ("EPA") to Ralcorp Holdings, Inc ("Ralcorp"), concerning the operation of its cereal manufacturing facility in Modesto, California ("the Facility").

The FOV has been issued because the Facility is a major source and it failed to obtain a Title V operating permit. The NOVs have been issued to address alleged violations of the San Joaquin Valley Air Pollution Control District ("District") Rule 2201 ("New and Modified Stationary Source Review Rule") and Rule 4693 ("Bakery Ovens"). Both of these rules are in the District's portion of the California State Implementation Plan. Specifically, the Facility is in violation of Rule 2201 because it failed to comply with Rule 2201's Best Available Control Technology and offset requirements when it added new emission units to the Bran Flake production line in 2002. The other NOV identifies a violation of Rule 4693 because the Facility's bakery oven emissions are not vented to an approved emission control device.

The FOV and NOV's inform the Facility that a conference on these matters may be arranged by making a request to this office within 10 working days after receipt. If such a conference is held, you will be advised and your participation would be welcome.

If you have any questions concerning the FOV and/or NOV's, please contact Cyntia Steiner, Air Enforcement Office, at (415) 947-4112.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan", with a long, sweeping horizontal line extending to the right.

Deborah Jordan  
Director, Air Division

Enclosures



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**  
**75 Hawthorne Street**  
**San Francisco, CA 94105-3901**

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R9-09-07

R9-09-08

Mr. James Ryden  
Chief, Compliance Division  
California Air Resources Board  
P.O. Box 2815  
Sacramento, CA 95812

Re: Ralcorp Holdings, Inc. (Facility N-1933)  
Modesto, California

Dear Mr. Ryden:

Enclosed for your information is a copy of a Finding of Violation ("FOV") and two Notice of Violations ("NOVs") issued by the United States Environmental Protection Agency ("EPA") to Ralcorp Holdings, Inc ("Ralcorp"), concerning the operation of its cereal manufacturing facility in Modesto, California ("the Facility").

The FOV has been issued because the Facility is a major source and it failed to obtain a Title V operating permit. The NOVs have been issued to address alleged violations of the San Joaquin Valley Air Pollution Control District ("District") Rule 2201 ("New and Modified Stationary Source Review Rule") and Rule 4693 ("Bakery Ovens"). Both of these rules are in the District's portion of the California State Implementation Plan. Specifically, the Facility is in violation of Rule 2201 because it failed to comply with Rule 2201's Best Available Control Technology and offset requirements when it added new emission units to the Bran Flake production line in 2002. The other NOV identifies a violation of Rule 4693 because the Facility's bakery oven emissions are not vented to an approved emission control device.

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If you have any questions concerning the FOV and/or NOV's, please contact  
Cynthia Steiner, Air Enforcement Office, at (415) 947-4112.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan", written over the printed name.

Deborah Jordan  
Director, Air Division

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

In the Matter of:	)	Docket No. R9-09-07
	)	
Ralcorp Holdings, Inc.	)	Finding and Notice of Violation
Modesto, California	)	
	)	
Proceeding Under Section 113(a),	)	
<u>Clean Air Act, As Amended</u>	)	

This Finding and Notice of Violation ("NOV") is issued to Ralcorp Holdings, Inc. ("Ralcorp") for violations of the Clean Air Act ("CAA" or "Act"), as amended, 42 U.S.C. §§ 7401-7671q, at its manufacturing facility located in Modesto (Stanislaus County), California (the "Facility"). The Facility is located within the jurisdiction of the San Joaquin Valley Air Pollution Control District ("SJVAPCD" or "District"). Section 113(a)(1) of the Act requires the EPA Administrator to notify a person in violation of a state implementation plan. The authority to issue NOV's has been delegated to the Director of the Air Division for EPA, Region IX.

**GENERAL STATUTORY AND REGULATORY BACKGROUND**

1. Section 110(a) of the Act requires that all states adopt state implementation plans ("SIPs") that provide for the implementation, maintenance and enforcement of primary and secondary air quality standards. 42 U.S.C. §7410(a).
2. Pursuant to Section 107(d) of the Act, 42 U.S.C. §7407(d), the Administrator has promulgated lists of attainment status designations for each air quality control region ("AQCR") in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for California AQCRs are listed at 40 C.F.R. §81.305.
3. The Facility is located in Stanislaus County, which is within the jurisdiction of the San Joaquin Valley

### **SJVAPCD Rule 2201 New and Modified Stationary Source Review Rule**

4. In accordance with section 110 of the Act, EPA has approved Rule 2201 (“New and Modified Stationary Source Review Rule”), as adopted on December 19, 2002, into SJVAPCD’s portion of the California SIP. 69 Fed. Reg. 27837 (May 17, 2004).
5. Section 4.0 of Rule 2201 requires “Best Available Control Technology” (“BACT”), on a pollutant-by-pollutant and emissions unit-by-emissions unit basis, for “a new emissions unit with a potential to emit greater than 2.0 pounds per day.”
6. Section 3.9 of Rule 2201 defines BACT as the most stringent emission limitation or control technique that has been achieved in practice or required by any SIP for the same class or category as the source.
7. Section 4.5.3 of Rule 2201 requires offsets, on a pollutant-by-pollutant and emissions unit-by-emissions unit basis, for facility modifications that increase VOC emissions by more than 20,000 pounds per year.

### **FINDINGS OF FACT**

8. Ralcorp owns and operates a cereal manufacturing facility located at 901 E. Whitmore Avenue, Modesto, California. The Facility has been in operation since the 1970s and is capable of operating 24 hours per day, 7 days per week, 52 weeks per year. Prior to Ralcorp’s ownership, the Facility was owned by Kraft Foods’ Maxwell House / Post Division.
9. Certain equipment at the Facility emits volatile organic compounds (“VOCs”) as a result of the use of ingredients such as flavorings and vitamins.
10. The Facility has three different production lines, one of which is known as the “Bran Flake” line. Depending on the type of cereal produced, the Bran Flake line may or may not involve the use a natural gas-fired dryer.
11. On or about September 13, 2002, Kraft Foods, the Facility’s owner at the time, submitted an



affected pollutant [defined as including VOCs, per Rule 2201, section 3.4] directly or as a fugitive emission.”

11. Section 3.2 of Rule 4693 defines an “existing Oven” as: “[A]n oven that was constructed and commenced operation prior to July 1, 2002.”
12. Section 5.0 of Rule 4693 requires that “no person shall operate ... [an] existing bakery unless the following standards are met:
  - a) The collected emissions are vented to an approved emission collection system.
  - b) The collected emissions are vented to an approved emission control device, which has a control efficiency of at least 95 percent . . . .”

### **FINDINGS OF FACT**

13. Ralcorp owns and operates a cereal manufacturing facility located at 901 E. Whitmore Avenue, Modesto, California. The Facility has been in operation since the 1970s and is capable of operating 24 hours per day, 7 days per week, 52 weeks per year. Prior to Ralcorp’s ownership, the Facility was owned by Kraft Foods’ Maxwell House / Post Division.
14. The Facility operates a “bakery oven” as that term is defined in Rule 4693 and permitted in Condition 10 of District permit N-1933-4-1.
15. Pursuant to its authority under section 114 of the Act, EPA sent a letter dated April 20, 2009 to Ralcorp Holdings, Inc. requesting information regarding the Facility’s compliance with the Act.
16. On or about May 18, 2009, Ralcorp submitted its response to EPA’s section 114 information request (“Response to EPA’s Information Request”).
17. Ralcorp’s Response to EPA’s Information Request contained a document entitled, “Potential to Emit by Product.” This document calculates the Facility’s potential to emit based on emissions resulting from the production of three different cereal products. This document states that the Facility’s potential to emit VOCs is 137.39 tons per year.

request (“Response to EPA’s Information Request”).

17. Ralcorp’s Response to EPA’s Information Request contained a document entitled, “Post-Modesto Cereal Production Recap in Pounds.” This document states that the Facility commenced production of “Cereal A” in 2003.
18. Ralcorp’s Response to EPA’s Information Request calculated the Facility’s maximum potential to emit VOCs, and estimated that “Cereal A” has the highest PTE on the Bran Flake line. Ralcorp’s response also states that potential VOC emissions from the production of “Cereal A” are 6.3 pounds per hour or 27.75 tons per year.

### **FINDING OF VIOLATION**

#### **Finding of Failure to Comply with Rule 2201**

19. The Facility is in violation of Section 4.0 of Rule 2201 because it failed to comply with Rule 2201’s BACT requirements when it modified the Bran Flake line by installing new emissions units with the potential to emit more than 2.0 pounds per day. Specifically, the Facility triggered Rule 2201’s BACT requirement when it installed two new coating reels and one 8 mmBtu dryer in late 2002 or early 2003.
20. The Facility is in violation of Section 4.5.3 of Rule 2201 because it failed to obtain offsets when it modified the Bran Flake production line by installing new emissions units with a post-project PTE above 20,000 pounds per year. Specifically, the Facility triggered Rule 2201’s offset requirement when it installed two new coating reels and one 8 mmBtu dryer in late 2002 or early 2003.
21. The Facility remains and will continue to be in violation of Rule 2201 until it installs and operates BACT and obtains valid offsets for the equipment authorized by ATC permit N-1933-3-4.

### **NOTICE OF VIOLATION**

Notice is given to Ralcorp Holdings, Inc. that the Administrator of the United States Environmental Protection Agency, by authority duly delegated to the undersigned, finds that Ralcorp Holdings, Inc. is in violation of section 110 of the Act, the California SIP, and SJVAPCD Rule 2201, as

emissions from the bakery oven to an approved emission control device.

25. The Facility remains and will continue to be in violation of Rule 4693 until it properly vents emissions from the bakery oven to an approved emission control device.

### **NOTICE OF VIOLATION**

Notice is given to Ralcorp Holdings, Inc. that the Administrator of the United States Environmental Protection Agency, by authority duly delegated to the undersigned, finds that Ralcorp Holdings, Inc. is in violation of section 110 of the Act, the California SIP, and SJVAPCD Rule 4693, as set forth in the Finding of Violation.

### **ENFORCEMENT**

Section 113(a)(1) of the Act provides that when any person has violated any requirement or prohibition of an applicable implementation plan or permit, EPA may:

- issue an order requiring compliance with the requirements or prohibition of such implementation plan or permit, or
- issue an administrative penalty order pursuant to section 113(d) for civil administrative penalties of up to \$37,500 per day of violation, or
- bring a civil action pursuant to section 113(b) for injunctive relief and/or civil penalties of not more than \$37,500 per day for each violation.

Furthermore, if a person knowingly violates any requirements of an applicable implementation plan more than 30 days after notification of violation, section 113(c) provides for criminal penalties or imprisonment, or both.

Under section 306(a) of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violations of the Act may result in the facility being declared ineligible for participation in any federal contract, grant, or loan.

## **PENALTY ASSESSMENT CRITERIA**

Section 113(e)(1) of the Act states that the Administrator or the court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113(e)(2) of the Act allows the Administrator or the court to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this NOV, the days of violation shall be presumed to include the date of this NOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

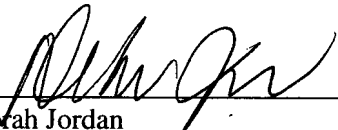
## **OPPORTUNITY FOR CONFERENCE**

Ralcorp may, upon request, confer with EPA. The conference will enable Ralcorp to present evidence bearing on the finding of violation, the nature of the violation, and any efforts it may have taken or proposes to take to achieve compliance. Ralcorp has the right to be represented by counsel. A request for a conference with EPA must be made within ten (10) working days of receipt of this NOV. The request for a conference or other inquiries concerning the NOV should be made in writing to:

Kara Christenson  
Office of Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency  
75 Hawthorne Street

San Francisco, California 94105  
(415) 972-3881

7/15/09  
Date

  
Deborah Jordan  
Director, Air Division